

Issue N-15-2023, 13 October 2023

# Cyprus consults on the Global Minimum Tax of MNE Groups and Large Scale Domestic Groups Law

## In brief

The Cyprus Ministry of Finance (**MoF**) opened on October 3, 2023, a [public consultation](#) on Cyprus' transposition into national law of the EU Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups (the **Directive**) of December 14, 2022. The Directive itself was developed from the OECD/G20 Inclusive Framework on BEPS Pillar Two Model Rules (the **Model Rules**); for more details please refer to our prior [newsletter](#). The public consultation invites comments from interested parties until October 31, 2023.

The MoF has published, in the Greek language, the text of a draft bill (the Draft Bill) and seeks comments thereon. The text of the Draft Bill generally aligns with the Directive, and includes additional text to cater for certain elements of the OECD/G20 Inclusive Framework on BEPS Administrative Guidance (**AG**) that has been released to date. The Draft Bill also includes administrative provisions, which are for each country to determine since as regards administration the Directive's main focus is on the GloBE Information Return.

The adoption of the Draft Bill will not modify Cyprus' corporate income tax (**CIT**) legislation, rather the Draft Bill will introduce an additional tax legislation which is to be applied subsequently to the application of CIT and other relevant taxes.

The Draft Bill provides for the introduction of a Qualified Income Inclusion Rule (**QIIR**) practically as from 2024, a Qualified Undertaxed Payments Rule (**QUTPR**) practically as from 2025 and a Cyprus domestic minimum top-up tax also as from 2025.

## In detail

### Key provisions of the Draft Bill

We highlight below notable elements of the Draft Bill:

- **QIIR**

The Draft Bill introduces the QIIR as provided for in the Directive. The Draft Bill provides for the introduction of a QIIR practically as from 2024.

Observation: The Directive provides for application of the QIIR by a local parent on its own results as well as on its local subsidiaries. This broader application is not required by the Model Rules though it is permitted. The Directive, however, requires this broader application in order to cater for EU law considerations.

- **QUTPR**

The Draft Bill specifies that the UTPR will be applied as an additional top-up tax, rather than charged under CIT via a denial of deduction mechanism.

The Draft Bill provides for the introduction of a QUTPR practically as from 2025.

Observation: The Directive grants Member States certain discretion on how they implement the QUTPR (i.e. in the form of an additional top-up tax or as denial of deduction) with the Draft Bill following the additional top-up tax route.

- **Cyprus domestic minimum top-up tax**

In the same manner as the QIIR and the QUTPR, the Draft Bill includes provisions for the push-down of Controlled Foreign Company (**CFC**) taxation for the Cyprus domestic minimum top-up tax.

The Draft Bill provides for the introduction of a Cyprus domestic minimum top-up tax as from 2025.

Observation: We anticipate that these Cyprus domestic minimum top-up tax mechanics will be further regulated with the issuance of a Ministerial Decree as provided for in the Draft Bill. Additionally, we anticipate that the said Ministerial Decree will regulate that the Cyprus domestic minimum top-up tax will respect the transitional safe harbor provisions and the initial phase of the international activities exemption, where relevant. We welcome the aligning of such introduction of the Cyprus domestic minimum top-up tax regime with the QUTPR i.e. with a one year delay from the introduction of the QIIR.

- **International shipping income**

The Directive provides for international shipping income to be excluded from the top-up taxes, under certain conditions, and the Draft Bill expands the scope of the exclusion to also exclude any other activity falling under alternative or supplementary tax regimes (e.g. tonnage tax).

Observation: This particular expansion of the exclusion is not provided for by the Directive or the Model Rules or the AG issued to date. Accordingly this expansion may not be included in the final version of the enacted law.

- **General Anti-abuse Rules (GAAR)**

The Draft Bill does not feature a GAAR.

Observations: This is in line with the Directive/Model Rules which also do not explicitly provide for a GAAR. Having said that, we understand that some countries have chosen to apply a GAAR in relation to the application of the Directive/Model Rules in their domestic Pillar Two legislation since whilst not explicitly provided for neither is it prohibited. Since the Draft Bill is a separate tax law with its own administration provisions, rather than part of any existing Cyprus tax laws, the GAARs in the existing Cyprus tax laws are not automatically applicable to the Draft Bill.

- **OECD/G20 Inclusive Framework on BEPS Administrative Guidance (AG)**

Certain elements of the AG issued to date are provided for in the Draft Bill including, but not limited to, simplification for short-term portfolio shareholdings and excess negative carry forward.

Observation: We anticipate that the remaining portions of the AG issued to date will be incorporated through Ministerial Decrees at a later date.

- **Safe harbours**

The Draft Bill requires Cyprus to respect safe harbours in cases where all EU Member States have consented to the relevant safe harbour. To date this includes the Transitional CbCR Safe Harbour.

Observation: It is expected that Cyprus will soon consent to the other two safe harbours that have been recently released by the OECD/Inclusive Framework i.e., the Transitional UTPR Safe Harbour and the QDMTT (Qualified Domestic Minimum Top-up Tax) Safe Harbour. Once Cyprus consents to these two safe harbours all EU Member States will have consented and per the Draft Bill they should also apply, under their conditions. Where a safe harbour's conditions are met the top-up tax under Pillar Two is deemed to be nil. The Draft Bill provides that a Ministerial Decree may be issued to further regulate the matter of safe harbours.

- **Administrative provisions**

Notification of being in scope: All Cyprus constituent entities have an obligation to notify the Cyprus tax authorities (**CTA**) no later than 15 months after the last day of the relevant fiscal year or 18 months in case of the transition year.

Top-up tax local return filing and payment: All Cyprus constituent entities must annually submit their local self assessment filing and make any payments due within 30 days of the due date for the submission of the GloBE Information Return which per the Draft Bill is no later than 15 months after the last day of the relevant fiscal year or 18 months in case of the transition year.

Penalties: The Draft Bill outlines penalties for late filings, delayed payments, delayed submissions, and other infringements. These penalty amounts are in line with those imposed by the Cyprus Assessment and Collection Laws for notification and returns as well as those related to Country-by-Country Reporting. With respect to the Transitional Period of Administrative Fines and Penalties, referring to fiscal years that begin on or before December 31, 2026 but does not include any tax year that ends after June 30, 2028, no administrative fines and penalties shall be imposed in relation to the submission of top-up tax local return filings, provided that the CTA is satisfied that the relevant MNE Group has taken all necessary actions to comply with the provisions of the law. The CTA shall consider that the MNE Group has taken all necessary actions if it can evidence that it acted in good faith aiming to understand and apply the provisions of the law.

## The takeaway

Given the fast-approaching implementation of the Cyprus QIIR, as from 2024, it is imperative for in-scope groups to take proactive measures now. In-scope groups should analyze the potential implications of the Draft Bill and assess whether their existing data, systems, technology, and processes can adequately support the requirements of Pillar Two.

The public consultation on the Draft Bill is open until October 31, 2023. Interested parties should consider making a submission to the Cyprus MoF by that date.

## Lets talk

For a deeper discussion of how this issue might affect your structures involving Cyprus and how we may assist you in navigating through these clarifications, please contact:

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